

# FOCUS

## WORKERS' COMPENSATION NEWS



SUMMER

1995

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### Legislation

The focus of the Spring edition is on laws passed by the 1995 Legislature. The next several pages contain information on laws affecting workers' compensation. Title 39, Chapter 71, of the Montana Code Annotated contains the entire workers' compensation statute which will give you the actual language of the changes made. If you have questions or need additional information, please call the Workers' Compensation Regulation Bureau at 444-6541.

### WORKERS' COMPENSATION LEGISLATION

Unless otherwise noted, these revisions became effective July 1, 1995.

**"Direct Seller" Exemption - House Bill 98** changes the meaning of direct seller for exemption purposes to correspond to the definition in the federal codes. This change does not materially affect the current exemption for direct sellers. Effective February 9, 1995.

**Self-Insured Security Deposit - House Bill 152** - Beginning March 7, 1995, the security deposit required from self-insured employers must be the greater of \$250,000; or an average of the incurred liabilities for the first three of the last four completed calendar years. After a self-insured employer has operated for three years, the Department, with the concurrence of the Montana Self-Insurers Guaranty Fund, may reduce the amount of the security deposit if the evidence indicates the full amount of the deposit is unnecessary.

**General "Non-substantive" Revisions - House Bill 200** - Most of the new provisions of the Employment Relations Division's general revision bill make only minor changes in the current law. However, the division did propose several substantive changes, and one amendment was added to the bill during the legislative process, which are worthy of special note.

#### New Definitions added by HB200:

- ✍ 'aid and sustenance' clarifies the current exemption for employment of persons performing services in return for aid and sustenance only.
- ✍ "household and domestic employment" further defines the current exemption for this employment.
- ✍ "limited liability company" is a new type of business entity authorized by the 1993 legislature.
- ✍ "sole proprietor" clarifies the current exemption for this type of business entity.

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✍ **Limited liability company** - HB200 adds the term "limited liability company" to the current definition of "employer" for workers' compensation purposes. (This term, to reference this new type of business entity in the law, has been added to numerous other sections as well, however, the effective dates vary in some instances.)

✍ **MCOs** - This change clarifies that the prohibited actions and penalties provided for in Sections 39-71-315 (effective July 1, 1995), and in 39-71-1108 (effective October 1, 1995), don't apply to medical services provided by treating physicians if they have ownership interests in a managed care organization certified by the department.

✍ **Exemption for enrolled tribal members** - Changes to the current exemption for enrolled tribal members requires associations, corporations, or other business entities be at least 51% owned by an enrolled tribal member to qualify for the exemption for work performed solely within the exterior boundaries of an Indian reservation.

✍ **Trade groups** - This change allows trade groups certified by the department to add additional members without department approval if the additional members meet the criteria identified in the original application for certification. This clarification is effective October 1, 1995. The 1993 legislature authorized employers in the same or similar industries to form trade groups so they could apply for workers' compensation coverage on a group basis.

✍ **Uninsured Employer Fund** - Language effective October 1, 1995, requires any money invested by the Uninsured Employer Fund be invested by the Board of Investments and any investment income be deposited in the fund.

✍ **Uninsured employer liability** - This revision requires an uninsured employer to reimburse the Uninsured Employer Fund for all benefit payments made to an employee injured at work. Previously there was a \$50,000 maximum an employer had to repay. This revision is also effective on October 1, 1995.

✍ **Subsequent Injury Fund** - Language effective October 1, 1995, requires any money invested by the Subsequent Injury Fund be invested by the Board of Investments and any investment income be deposited in the fund.

## **SUBSTANTIVE changes in HB200**

✍ **Member-managed limited liability companies** - This amendment adds an exemption for working members of member-managed limited liability companies to the current exemptions for sole owners and working members of partnerships.

✍ **Exemption for corporate officers and managers** - An additional amendment adds exemptions for corporate officers and managers of manager-managed limited liability companies. To qualify for this exemption you must meet one or more of the following provisions: you do not perform the ordinary duties of a worker for the corporation and do not receive pay from the corporation for performing the ordinary duties of a worker; you are engaged primarily in household employment for the corporation; you own twenty percent or more of the number of shares of stock in the corporation; or, you are the husband, wife, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother or sister of an individual who owns twenty percent or more of the number of shares of stock in the corporation.

✍ **Independent contractor exemption** - This revision requires a \$25 fee for the Independent Contractor exemption. There is no fee for the initial application; however, if an



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application is incomplete or is otherwise deficient and must be returned to the applicant for completion or correction, the \$25 fee must accompany the resubmission of the application.

**IC Renewal requirements** - Another revision limits the Independent Contractor exemption to one year following the date of the department's approval. To maintain Independent Contractor status, Independent Contractors must submit a renewal application annually accompanied by the \$25 fee. A renewal application must be submitted for all Independent Contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and the \$25 fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption.

**Penalties for false statements** - These revisions also add penalties for making false statements or misrepresentations concerning Independent Contractor status.

**Manager-managed limited liability company** - This change describes the standards a corporation or manager-managed limited liability company must follow to elect coverage for its corporate officers and managers.

**Uninsured employer** - Effective October 1, 1995, the department may issue a cease and desist order to a prime contractor who has subcontracted for the services of an uninsured employer. Under this order, all operations of the uninsured employer must cease at a work site controlled by the prime contractor. In addition, if after three days, the prime contractor has not complied with the cease and desist order, the department may order the prime contractor to cease all operations at the work site. Penalties for non-compliance have also been added to this section.



**Spousal Exemption - House Bill 216** adds an exemption for the employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under the IRS codes (26 U.S.C. 7703).

**Definition of "Volunteer" - House Bill 462** adds the definition of "volunteer" to clarify that persons who are enrolled members of volunteer fire departments or persons who provide volunteer ambulance services are employees. This change is effective April 13, 1995.

**Jockey Exemption - Senate Bill 22**, which was effective March 15, 1995, adds an exemption to exclude employment of a jockey performing under a license issued by the Board of Horse Racing. The exemption applies only from the time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after the race. In addition, the exemption applies only if the jockey has acknowledged the exemption in writing.

**Petroleum Land Professional Exemption - Senate Bill 125** adds an exemption to exclude services performed by a petroleum land professional. As used in this exemption, "petroleum land professional" means a person who is engaged in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of mineral rights; is paid for services that are directly related to the completion of a contracted specific task rather than on a hourly wage basis; and performs all services as an Independent Contractor under a written contract. This bill was effective on March 9, 1995.



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**Definition of "temporary service contractor" and "temporary worker" - Senate Bill 151** revises the current definitions for "temporary service contractor" and for "temporary worker" to clarify the meaning of both terms. These changes will become effective October 1, 1995.

**Attorney Fees - Senate Bill 233** requires an attorney to return fees and costs to the insurer which were awarded for obtaining benefits to the claimant if the claimant is convicted of obtaining the benefits through fraud or deception.

## SAFETY LEGISLATION

*John Maloney*



The session began with the Safety Bureau offering one simple piece of legislation, **HB 68**, which was intended to clean up some language and correct some oversights that have been in

the statutes for years. However, some of the issues proposed by Governor Racicot's Renew Government Task force were introduced and impacted the Bureau substantially.

**HB 66**, a measure to transfer the licensing of the boiler operators, crane operators and construction blasters to the Department of Commerce, Professional and Occupational Licensing (POL) Bureau suggested by the task force, was on the fast track for passage. Additionally, **HB 432**, another recommendation of the Task Force, proposed transferring the inspections of boilers to the Department of Commerce (DOC), Building Codes Bureau.

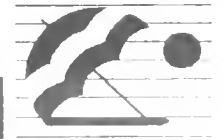
Since these three bills were closely related and dependent on one another it was decided to combine all three concepts into one single bill. **HB 68** was designated as the vehicle to achieve this unification, so the final version of HB 68 included not only the general clean-up intended by the Safety Bureau but also the transfer of the licensing func-

tions to POL and the transfer of the inspection functions to the Building Codes Bureau. No real opposition surfaced to these concepts so HB 68 passed and was signed into law by Governor Racicot.

Finally, **SB 287** amended the Safety Culture Act, which was passed in the 1993 session. It will allow a waiver of the safety committee requirement to employers who demonstrate the existence of an effective safety program with commensurate accident and injury rates. The waiver can be granted by the workers' compensation insurance carrier. Administrative rules will be written outlining the stipulations to be met in order to obtain a waiver.

### Sorry we're late!

**The Spring edition of FOCUS was late getting to press, so we decided to call it the Summer edition. Your Fall copy should arrive sometime in November. Thanks for your patience.**



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## **Congratulations! It's A . . .**

*Jean Branscum*

. . . Safety Curriculum (or will be by the end of July). The Safety Bureau has moved a step forward in the delivery of a novel safety curriculum to the schools of Montana. A contract has been signed with Montana Tech and Western to develop unit lessons and a teacher in-service for an industrial technology and agriculture education general safety curriculum. Achieving this working partnership means not only a quality product for Montana's instructors, but an effective product for teaching our youth about the necessity for safe work practices as required by the Montana Safety Culture Act.

The development of unique partnerships was key to the birth of this curriculum and will be key to its success. The Bureau worked closely last summer with safety professionals and instructors from junior highs, high schools and Colleges of Technology across Montana to develop a general safety curriculum outline. These same instructors are now anxiously awaiting the new curriculum's arrival and will become our partners in piloting the lessons in their schools next fall. Montana Tech will join this partnership by conducting an in-service to these instructors this August and to other interested instructors during the school year. These in-services will prepare them for the successful integration of the curriculum in the Fall of 1996.

We won't be pacing the floor awaiting implementation of the new curriculum, however, as plans are underway for the expansion into other program areas like health and business. We will be looking at starting up new partnerships this summer to begin the development of unique safety curricula in program areas that reach the majority of our youth. We will also be organizing meetings with school boards and associations across the state to open the communication lines and encourage the use of the new curricula.

Nevertheless, we are still anxious to deliver the first curriculum and watch its journey toward acceptance in the schools and its success in relaying an important message to our state's future workers.



## **PROFESSIONAL EMPLOYER ORGANIZATION LICENSE**

*Jeanne Johns*

**Senate Bill 264**, the Montana Professional Employer Organization Licensing Act, requires professional employer organizations (PEOs) and other businesses offering employee leasing services to Montana employers to become licensed by the Montana Department of Labor and Industry effective July 1, 1995. Employers operating as PEOs must submit an application on forms which will be supplied by the Department of Labor and Industry and must pay a \$750, non-refundable, application fee.

*Continued on Page 8*



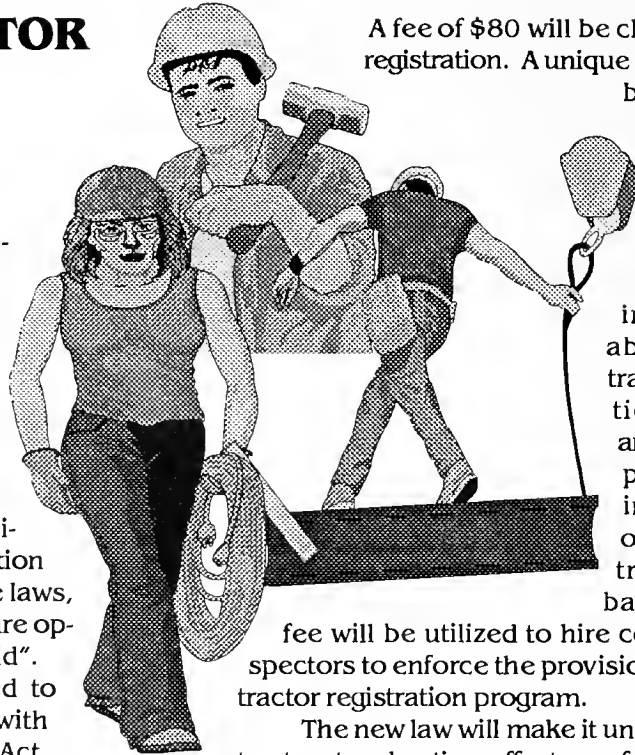
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## NEW CONTRACTOR REGISTRATION PROGRAM

*Denny Zeiler*

The 1995 Legislature approved SB354, sponsored by Gary Forrester (D-Billings), which will require all construction contractors to obtain a certificate of registration from the department by July 1, 1996. The intent of the new act is to ensure that all contractors are in compliance with workers' compensation and unemployment insurance laws, and to ensure all contractors are operating on a "level playing field".

Contractors are required to submit proof of compliance with the Workers' Compensation Act, either coverage or a WC exemption if an independent contractor, proof of unemployment insurance coverage, a social security number or an IRS employer number, the type of contracting activity, the names and addresses of all owners, and a surety bond or other form of security in order to obtain a certificate of registration. Certificates are valid for one year and will become invalid if the bond expires, or if the workers' compensation or unemployment insurance coverage expires. For independent contractors, the certificate will become



A fee of \$80 will be charged for the registration. A unique concept in the bill requires 15% of the registration fee be used for a program to educate the building industry about the contractor registration program and educate the public regarding the hiring of building contractors. The balance of the

fee will be utilized to hire compliance inspectors to enforce the provisions of the contractor registration program.

The new law will make it unlawful for contractors to advertise, offer to perform work, submit bids, or perform work without completing the registration process. Also, contractors can't sue or file liens if unregistered. Additional staff will be hired by the Employment Relations Division to enforce the requirements of the contractor registration law.

The new compliance inspectors will investigate alleged or apparent violations of the act, inspect and investigate work sites, and issue citations for violations. A contractor found to have committed an infraction must be assessed a penalty of \$150 a day for each day for each infraction in which a contractor conducted business without being registered. The compliance inspectors will have the authority to issue a cease and desist order restraining further construction work at the work site by the unregistered contractor. Contractors who fail to respond and continue to operate without becoming registered are guilty of a misdemeanor and will be prosecuted in the county where the infraction occurred.

**For more information about the contractor registration program contact the Employment Relations Division at (406) 444-7720**

invalid on the date the contractor hires employees unless the contractor provides proof of workers' compensation insurance for those employees.



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## THE BENEFIT OF SUBSEQUENT INJURY FUND CERTIFICATION

Pat Rogstad

The Legislature established the Subsequent Injury Fund (SIF) in 1973 to assist the vocationally handicapped in obtaining employment by offering a financial incentive to employers who hire certified workers. Employers are more likely to hire certified workers because there is a limit on prospective employers' workers' compensation liability if the worker is injured or reinjured on the job.

Workers' compensation insurers are liable only for the first 104 weeks of compensation and/or medical benefits, thereby lessening the potential impact on employers' workers' compensation premium rates for SIF certified workers. Certification is not body part specific so the protection of the SIF applies to any new injury. After the first 104 weeks of benefits have been paid, the SIF assumes all remaining liability for the life of the claim.

The law defines "vocationally handicapped" as a person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or reemployment considering the person's age, education, training, experience and employment rejection. Permanent restrictions or limitations placed on the workers by their physician are also an important factor.

The impairment does not have to be caused by a workers' compensation injury to be eligible for SIF but can be the result of a congenital defect, home or auto accident, etc.. The American Medical Association (Guides to Evaluation of Permanent Impairment) defines impairment as: "the loss of, loss of use of, or derangement of any body part, system, or function. A permanent impairment is an impairment that has become static or well stabilized with or without medical treatment, or that is not likely to remit despite medical treatment of the impairing

condition." If an injury occurs, the standard procedure for filing a workers' compensation claim must be followed and the insurer must be notified the injured worker is certified. If injured, certified workers are entitled to all the benefits due under the Workers' Compensation Act.

Once certified, workers are certified for life and need not reapply for certification each time they change employer. Employers hiring workers certified by the Department are gaining experienced, skilled workers while limiting their workers' compensation liability. An employer must submit a Certificate of Employment to the SIF within 60 days of hiring a certified worker or before a compensable injury occurs.

The SIF is funded through an annual assessment of all Montana workers' compensation insurers of up to 5% of each insurer's compensation payments for the previous fiscal year. There currently are 1,906 workers certified and the Fund paid out \$196,339 in benefits during the last fiscal year.

Insurers **must** notify the Fund of its potential liability between 90 and 150 days before the expiration of 104 weeks after the date of injury. The insurer continues to make payments and requests reimbursement from the SIF every six (6) months.



**Please contact the Employment Relations Division, P.O. Box 8011, Helena MT 59604-8011 or call 444-7737 for additional information or applications.**





*Continued from Page 5*

The law does not apply to labor organizations, the State of Montana or its political subdivisions, the United States, or any programs or agencies of those entities. In general, PEOs provide services, for an administrative fee, to their employer/clients designed to relieve them from the administrative paperwork associated with employing workers. The PEO establishes a contractual relationship, either an "employee leasing arrangement" or a "professional employer arrangement", with its employer/clients to assign workers to those employer/clients and assumes the responsibility as the employer for the workers assigned to the various employer/client locations on an on-going basis. The PEO then issues payroll checks to workers, reports and pays workers' compensation premiums, unemployment insurance taxes, and other employment taxes out of its own accounts on behalf of its clients.

In an "employee leasing arrangement", the PEO hires its own employees and assigns the employees to work for its employer/clients to staff and manage, or assist in staffing and managing, the employer/client's business. The "professional employer arrangement" contemplates a shared co-employer status whereas in the "employee leasing arrangement", the leasing company retains the employer status for all legal responsibilities including payment of workers' compensation and other payroll matters. **For more information contact Jeanne Johns, Department of Labor and Industry, Employment Relations Division, P. O. Box 8011, Helena, MT 59604-8011 or call (406) 444-6526.**



## Medical Provider Update

### MCOs Running Smoothly

*Cathy Brown Kummer*

Since the legislative session in 1993, the department has certified nine managed care organizations. All currently have signed contracts with the State Fund, and have been doing business since December of 1994.

The intended purpose of using a managed care organization is to create better case management and eventually medical cost containment. The 1995 legislative session mandated changes on the indemnity side of workers' compensation, which combined with managed care and preferred providers, should produce savings for all workers' compensation insurers.

It will be a year in July since the Department certified the first managed care organization. Each Managed Care Organization must report to the Department annually on the anniversary date of their certification.

As provided in 24.29.2351, ARM, the information they must report includes a summary of:

1. the results of the programs implemented to promote early return to work.
2. the utilization review activities.
3. disputes processed through the dispute resolution procedures noted in the certification plan.
4. peer review activities.

These reports will be used as a comparison of MCOs and to determine if the MCO's plan as certified, is being followed. The department is currently developing an audit procedure.

Finally, Dennis Underwood, MCO Program Officer, has left the department and all referrals, questions and suggestions in this area are being fielded by Cathy Brown Kummer, (406)444-0563. Cathy will soon be meeting with MCOs around the state to review their operations and discuss the annual reporting requirements.

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## AAG UPDATE

*Kathy Burton*

The Assessment Advisory Group (AAG) was formed in June of 1994, to review the assessment process, advise the Employment Relations Division (ERD) on what the workers' compensation regulatory system should look like, to identify legislative changes that may be needed and to explore alternative ways an assessment may be apportioned. The Workers' Compensation Act requires the Department to assess Plan I Self Insurers, Plan II Private Insurance Carriers, and Plan III the State Compensation Insurance Fund, for all costs of administering the Workers' Compensation, Occupational Disease and Occupational Safety Acts. The process of calculating and collecting funding to support these statutes is commonly referred to as the "administrative assessment".

At ERD's request, representatives from the three Plans agreed to work together toward these goals. Members of the group are:

- \* Marilyn Bartlett, Golden Sunlight Mine, representing self-insured private businesses,
- \* Bob Worthington, Montana Municipal Insurance Authority, representing self-insured public entities,
- \* Jackie Lenmark, American Insurance Association, representing insurance companies,
- \* Mark Barry representing the State Compensation Insurance Fund.

The group developed the following mission statement.

**The Assessment Advisory Group (AAG) will examine the government functions funded by the workers' compensation administrative assessment and make recommendations to the workers' compensation community through the following goals:**

- \* **Identify acceptable, appropriate and necessary regulations and services;**
- \* **Recommend effective processes to perform functions;**
- \* **Mutually agree upon a simplified, understandable and equitable assessment process;**

- \* **Continue to improve communication within the workers' compensation community; for the purpose of developing a long term direction for the administrative assessment.**

The group used their initial meetings to familiarize members with the process used in generating the assessment and the functions of ERD supported by the assessment. The process has proven valuable in providing a foundation for generating ideas, suggestions and changes. Members agreed in initial meetings they would not have time to affect the FY '95 assessment, but are committed to making recommendations for FY '96 implementation. It is already obvious some changes will require legislative action and the group intends to be prepared for the 1997 Legislature to speak with one voice for those improvements which will benefit the assessment process and workers' compensation oversight functions.

In addition, members are optimistic a function by function examination of ERD's mandates will result in new approaches, increased efficiency and/or cost savings which will make the assessment more valuable to insurers. The group also has studied the Workers' Compensation Court, the Hearings and Legal Services function, Workers' Compensation Mediation, Data Analysis, the Management Information System, and the Division's Administrative Support function. They are currently examining the Safety Bureau and Claims Management.

The AAG is on the verge of addressing the difficult issues that led to the formation of the group. The future holds a shift from examining the functions funded by the assessment to examining alternative methodologies of apportioning the assessment currently used. The group believes the process will result in a methodology that is more straightforward.

If you have ideas or concerns about this process, please contact the facilitator of the AAG, Kathy Burton, at 444-1576.



### Dates to Remember

#### **Nominations for Department's Safety Awards Due August 1st**

If you know of a business that has an outstanding safety record, don't forget to nominate them for the safety award to be presented at the Governor's Conference on Workers' Compensation and Safety to be held September 20-22 in Big Sky, Montana (see registration, page 11). Each year at the conference, the Department recognizes four businesses for their outstanding safety performance.

You can request a nomination form by contacting the Employment Relations Division, Department of Labor and Industry, Safety Bureau, P.O. Box 1728, Helena, MT 59624 or call (406) 444-6401.

**Don't delay - send your nominations today!**

#### **Fall Sessions - 1995 Assistance for Business Clinics**

Do you need to know more about labor laws and how to do business with state and federal governments? Do you need information on filling out the many business related reporting forms? The following agencies will provide you with this information as Assistance for Business Clinics:

- ◆ Department of Labor and Industry
  - ◆ Unemployment Insurance Division
  - ◆ Employment Relations Division
    - ◆ Wage and Hour
    - ◆ Safety Bureau
    - ◆ Workers' Compensation
- ◆ Internal Revenue Service
- ◆ State Fund (State Compensation Insurance Fund)
- ◆ Department of Revenue

**It's not too late - the fall sessions begin in August - Mark your calendars now!**

<u>Date</u>	<u>City</u>	<u>Location</u>	<u>Sponsor</u>	<u>Fee</u>
Aug 15	Colstrip	Human Resources Buiding	Colstrip Area Association of Business, Inc. (748-3833)	\$15
Aug 16/17 (same program each day)	Billings	MSU Billings	MSU Billings (657-2203)	\$25
Sept 7	Lewistown	Yogo Inn	Chamber of Commerce (538-5436)	\$20
Sept 12	Bozeman	MSU-Strand Union Building	Chamber of Commerce (586-5421)	\$20
Sept 13	Butte	War Bonnet Inn	Chamber of Commerce (494-5595)	\$20
Sept 20	Helena	Colonial Inn	Chamber of Commerce (442-4120)	\$20 or \$25



*Summer 1995*

**REGISTRATION**

**1995 GOVERNOR'S CONFERENCE ON WORKERS' COMPENSATION AND  
OCCUPATIONAL SAFETY**

Duplicate/use additional paper as necessary;  
mail completed registration to:

**EMPLOYMENT RELATIONS DIVISION  
DEPARTMENT OF LABOR & INDUSTRY  
ATTENTION: KARA CHRISTIANSON  
P.O. BOX 6518  
HELENA, MT 59604-6518**

Name \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Street/P.O. Box

City

State

Zip

Advanced Registration - enclose \$100.00 per participant.  
Deadline September 6, 1995.

Any registration received after September 6th will be \$125.00

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**ROOM RESERVATIONS**

**Big Sky Montana --800-548-4486**

Please make your own room reservations.

Room block will be held until August 25, 1995.

Room rates:

\$70.00	First Class
\$80.00	Deluxe
\$125.00	Suite

## **Medical Provider Update**

*Continued from Page 8*

### **Utilization and Review Guidelines**

At the last meeting of the Utilization and Treatment Standards Steering Committee in April, the members came to a consensus Montana would adopt Colorado's guidelines with changes made by the Steering Committee and Advisory Committees to make them workable for Montana. The first guidelines to be reviewed were low back. Once the changes are made, rules will be promulgated for input from all other parties affected by the guidelines. Our target for low back guidelines is the Fall of 1995. Any questions should be directed to Cathy Brown Kummer, (406)444-0563.

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